

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
KELDERMAN LIME, INC.	NO. 2009-AQ-04

TO: Garold Kelderman
Kelderman Lime, Inc.
2674 HWY 92
Oskaloosa IA 52577

I. SUMMARY

This administrative consent order (order) requires Kelderman Lime, Inc., (Kelderman) to submit a completed Minor Source Emissions Inventory Questionnaire (MSEIQ) and to pay an administrative penalty of \$1,500.00.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Bryan Bunton
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-0363

Relating to legal rights:

Carnie Schoenebaum
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Iowa Department of Natural Resources (Department) has jurisdiction to issue this order.

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III. STATEMENT OF FACTS

The Department and Kelderman hereby agree to the following statement of facts:

1. Kelderman is a manufacturing company that makes components for motor homes, farm implements, and supplies lime for agricultural purposes.

Past Enforcement History

2. On January 21, 2005, the Department sent a letter to Kelderman informing it that the Department was conducting an inventory of air pollutant emissions from minor sources. An MSEIQ and instructions were sent along with this letter. Further, the Department provided information with regard to receiving assistance from the Department to aid in completion of the MSEIQ. The Department requested that the completed MSEIQ be submitted by May 15, 2005.
3. On April 26, 2005, the Department mailed Kelderman a letter reminding it that in January it had been sent a MSEIQ. This letter also reminded it that the completed MSEIQ was due by May 15, 2005.
4. On May 19, 2005, another letter was sent to Kelderman informing it that the Department had not yet received the completed MSEIQ and that if the Department did not receive a response by June 3, 2005, the facility may be referred to the Department's Air Quality Bureau's Compliance Unit for enforcement.
5. On July 21, 2005, Tom Wuehr, Department staff person, called Clint Kelderman (president of Kelderman). During the course of this phone conversation Clint Kelderman gave assurance that the completed MSEIQ would be submitted no later than August 22, 2005.
6. On August 8, 2005, the Department sent Clint Kelderman a letter, by certified mail, confirming the above referenced conversation. This letter informed him to be sure to have the requested information sent no later than August 22, 2005. Further, it also informed him that if the completed MSEIQ was not submitted to the Department additional enforcement action may be taken by the Department.
7. On February 13, 2006, Administrative Consent Order No. 2006-AQ-03 was entered for the above discussed violations.
8. On February 14, 2006, the completed MSEIQ was submitted.

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Current Enforcement History

9. On January 24, 2008, the Department sent a letter to Kelderman informing it that the Department was conducting an inventory of air pollutant emissions from minor sources. An MSEIQ and instructions were sent along with this letter and the Department provided information with regard to receiving assistance from the Department to aid in completion of the MSEIQ. The Department requested that the completed MSEIQ be submitted by May 15, 2008.

10. On May 1, 2008, a letter reminding Kelderman to submit its completed MSEIQ was sent by the Department. Nevertheless, the MSEIQ was not submitted.

11. On August 6, 2008, a notice of violation letter was sent, by certified mail, to Kelderman for failure to submit its completed MSEIQ by the May 15, 2008¹ deadline. This letter also informed Kelderman that if the MSEIQ was not submitted to the Department additional enforcement action may be taken. To date the MSEIQ has not been submitted.

IV. CONCLUSIONS OF LAW

The Department and Kelderman hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B. 133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards.
2. 567 IAC 21.1(3) requires submission to the Department of a completed MSEIQ upon written request by the Department. The above stated facts show noncompliance with this provision.

V. ORDER

THHEREFORE, it is hereby ordered and Kelderman agrees to do the following:

1. Submit to the Department the completed MSEIQ no later than 30 days from receipt of this order; and

¹ The NOV sent by the Department contained a typo and the deadline provided was May 15, 2007. Nevertheless, based on the contents of that letter and previous correspondence with the Department it was apparent that the deadline was May 15, 2008.

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2. Kelderman shall pay a penalty of \$1,500.00 within 30 days of the Director of the Department signing this order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for violations of the type cited in this order. Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000.00 for violations of chapter 455B or rules, permits or orders adopted or issued under this chapter. 567 IAC chapter 10 was adopted to implement Iowa Code section 455B.109. Pursuant to 567 IAC section 10.2, it has been determined that the most equitable and efficient means of redressing and abating the violations at this time is through the issuance of an order with a \$1,500.00 penalty.

Economic Benefit: It is estimated that it would take an employee approximately 16 hours to fill out the MSEIQ. Kelderman has saved employee time and energy by not submitting the MSEIQ. Therefore, \$500.00 is assessed for this factor.

Gravity of the Violation: Late submittal of the MSEIQ prevents the Department and the public from promptly being informed of the facility's compliance status. Each week that Kelderman fails to submit the MSEIQ further harms the Department's ability to accurately inventory minor source pollutants. For this reason, \$500.00 is assessed for this factor.

Culpability: The Department requested that Kelderman submit the MSEIQ numerous times in writing. Moreover, in 2006, Administrative Consent Order No. 2006-AQ-03 was issued by the Department for the same violations. Therefore, it is apparent that Kelderman had knowledge that submission of the MSEIQ was required. Therefore, \$500.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.138(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Kelderman. By signature to this order, all rights to appeal this order are waived.

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VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this order constitutes full satisfaction for the violations set out in this order.


Garret Kelderman of Kelderman Lime, Inc.

Dated this 24 day of
Feb., 2009.


RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 6 day of
March, 2009.

AQB, Bryan Bunton, Carrie Schoenebaum, VII.B.2. d.